

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**CODY POWELL,**

**Petitioner,**

**v.**

**UNITED STATES DISTRICT COURT for the  
WESTERN DISTRICT OF OKLAHOMA,**

**Respondent.**

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**CIV-16-1473-R**

**REPORT AND RECOMMENDATION**

Petitioner, a prisoner appearing *pro se*, has filed a Petition for Writ of Mandamus, (ECF No. 1). The undersigned magistrate judge reviewed the pleadings filed by Petitioner and entered an Order (ECF No. 5), notifying Petitioner that he must either pay the \$400.00 filing fee or be granted leave to proceed without prepayment of fees. Petitioner submitted an incomplete application to proceed *in forma pauperis* on January 2, 2017 (ECF No. 6). The Court *sua sponte* granted Petitioner additional time to cure said application. The Petitioner was ordered to cure the specific deficiencies by February 10, 2017. *See* ECF No. 7. Petitioner was also advised that if the deficiency was not cured, the undersigned would recommend the dismissal of the action without prejudice. A review of the Court's records indicates that the Petitioner has failed to comply with the Order and has not filed any further pleadings with the Court.

The undersigned finds that Petitioner's failure to comply with the Court's Order, in light of the Court's right and responsibility to manage its cases, warrants dismissal of this action without prejudice. *See Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Center*, 492 F.3d 1158, 1161 n.2, 1162 (10th Cir. 2007) (*sua sponte*

dismissal for failure to comply with Court's orders permitted under federal rules, and court need not follow any particular procedures in dismissing actions without prejudice for failure to comply).

### **RECOMMENDATION**

Based on the foregoing findings, it is recommended that this action be **DISMISSED WITHOUT PREJUDICE** for Petitioner's failure to comply with this Court's Order. Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of Court by **April 17, 2017**, in accordance with 28 U.S.C. § 636 and Federal Rule of Civil Procedure 72. Petitioner is further advised that any failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

This Report and Recommendation **disposes of all issues** referred to the undersigned magistrate judge in the captioned matter.

ENTERED on March 31, 2017.

  
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SHON T. ERWIN  
UNITED STATES MAGISTRATE JUDGE